

Retailer No. _____
Chain No. _____

AGREEMENT
between
INDIANA DEPARTMENT OF NATURAL RESOURCES
and
AUTOMATED POINT OF SALE LICENSE SYSTEM RETAILER

This Agreement, entered into by and between the Indiana Department of Natural Resources, Division of Fish and Wildlife (“DNR”) and the automated point of sale license system retailer (“Retailer”), is executed pursuant to the following terms and conditions, and the parties agree as follows:

1. Purpose of Agreement

The DNR has developed the automated point of sale license system (“ALS”) to dispense hunting, fishing and trapping licenses to residents and non-residents of Indiana in accordance with Indiana Code §14-22-12-7.5. Each Retailer authorized by the DNR to sell licenses through the ALS shall retain a service fee, the amount of which is established in Indiana Code §14-22-12-8, for each license sold. The purpose of this Agreement is to identify the roles and responsibilities of the DNR and each authorized Retailer.

2. Consideration

The Retailer shall retain the service fee established in Indiana Code §14-22-12-8 for each license sold through the ALS under this Agreement. In exchange, the DNR will receive the benefit of having its hunting, fishing and trapping licenses sold by the Retailer through the ALS.

3. Term

This Agreement shall be effective until terminated by one of the parties. Within 30 days of termination by either party, the Retailer shall remit to the DNR all money collected for the licenses sold and return all equipment and supplies to the DNR.

4. Duties of the Parties

The parties acknowledge that they have read and understand their respective duties under this Agreement as set forth in Appendix A, which is attached to and made a binding part of this Agreement, and the parties agree to perform those duties.

5. Termination and Deactivation

A. Termination by Either Party for Convenience

This Agreement may be terminated by either party whenever, for any reason, a party determines that such termination is in its best interest. Termination shall be effected by delivery to the other party of a Termination Notice at least thirty (30) days prior to the termination effective date.

B. Termination by the DNR for Default

The DNR may terminate this Agreement, effective immediately upon notice to the Retailer, for any of the following reasons:

1. The Retailer fails to maintain the confidentiality of personal data, including a Social Security number, provided by any customer seeking a license.
2. The Retailer fails to abide by the DNR's policies and procedures for issuing licenses.
3. The Retailer fails to maintain sufficient funds on deposit for the number and type of licenses sold.
4. The Retailer fails to meet any of the other responsibilities outlined in this Agreement.

The rights and remedies of the DNR in this clause are in addition to any other rights and remedies provided by law or equity or under this Agreement.

C. Retailer Obligations Upon Termination

Within thirty (30) days of termination by either party, the Retailer shall remit to the DNR all money collected for the licenses sold and return all equipment and supplies to the DNR.

6. Confidentiality of License Applicant Information

The Retailer understands and acknowledges that license applicants will disclose to the Retailer personal and confidential data, materials and information when seeking a hunting, fishing or trapping license. The Retailer promises and assures that data, material and information gathered by or disclosed to the Retailer in the Retailer's performance of this Agreement will not be disclosed to others, discussed with third parties or otherwise distributed or utilized by the Retailer or any agent, representative or employee of the Retailer. All data received from license applicants, including Social Security numbers, shall be kept confidential. Any breach of this provision shall result in immediate termination of this Agreement.

7. Governing Laws

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

8. Additional Terms and Conditions

The parties acknowledge that they are bound by the additional terms and conditions of this Agreement as set forth in Appendix B, which is attached to and made a binding part of this Agreement.

9. Successors and Assignees

The Retailer binds its successors, executors, administrators, and assignees to all covenants of this Agreement.

10. Authority to Bind Retailer

The signatory for the Retailer represents that he/she has been duly authorized to execute this contract on behalf of the Retailer, and this Agreement is not subject to further acceptance by Retailer when accepted by the State of Indiana.

11. Addenda

The DNR may, from time to time, issue an addendum to this Agreement. Such an addendum will be promptly distributed to the Retailer, and the Retailer shall comply with the specifications contained within the addendum as if part of this original Agreement. The Retailer may terminate this Agreement if it is unable or unwilling to comply with any provision of any Addendum.

12. Noncollusion

The undersigned attests that he or she is the Retailer or a representative, agent or officer of the Retailer and that, to the best of his or her knowledge, neither the undersigned nor any other representative, agent or officer of the Retailer, directly or indirectly, entered into or offered to enter into any collusion or agreement to receive or pay any sum of money or other consideration in exchange for the execution of this Agreement, other than what appears on the face of this Agreement.

Acceptance of Agreement

Retailer and the DNR have, through their duly authorized representatives, entered into this Agreement. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures dated below, hereby agree to the terms thereof.

RETAILER:

Signature: _____

Date: _____

Printed Name: _____

Title: _____

Business Name: _____

INDIANA DEPARTMENT OF NATURAL RESOURCES:

John Goss, Director

Pursuant to IC 4-13-2-14.1(b), each of the persons listed in below has delegated to the Director, or the designee of the Director, of the Department of Natural Resources the responsibility to approve individual contracts entered through this form contract.

Charles R. Martindale, Commissioner, Department of Administration, Delegation made November 12, 2004

Marilyn F. Schultz, Director, State Budget Agency, Delegation made November 12, 2004

*Form Approval has been granted by the
Office of the Attorney General pursuant to
IC 4-13-2-14.3(e) on the 17th day of November, 2004.*

APPENDIX A

STATEMENT OF RESPONSIBILITIES OF THE PARTIES TO THE AUTOMATED POINT OF SALE LICENSE SYSTEM AGREEMENT

The parties shall have the respective duties and responsibilities set forth in this Statement of Responsibilities. The Indiana Department of Natural Resources (“DNR”) may modify the Statement of Responsibilities from time to time, as necessary. The automated point of sale license system retailer (“Retailer”) may not modify the Statement of Responsibilities.

The DNR agrees to and shall:

A. Service Fee and Security Deposit

1. Allow the Retailer to retain the service fee established in Indiana Code §14-22-12-8 for each license sold through the ALS under this Agreement. The service fee is subject to change at the discretion of the Indiana General Assembly.
2. Refund the Retailer the security deposit, if paid, for equipment within 45 days of the following:
 - All terminals and printers returned in good working condition; and
 - All amounts due the DNR for license sales paid in full.

B. Equipment and Software

1. Provide the Retailer with an online terminal and printer (“equipment”) at each approved location for the sale of authorized DNR licenses and for reporting the licenses sold, unless the Retailer has elected to use its own equipment that meets DNR standards.
2. Provide maintenance and repairs to the DNR equipment or replace DNR equipment, as necessary.
3. Maintain database and application servers and the software application.
4. Respect peak selling periods when considering maintenance and provide advance notice of planned outages whenever possible. The DNR reserves the right to conduct critical repairs immediately and without notification.

C. Training and Support

1. Provide appropriate training to the Retailer’s assigned personnel before the Retailer begins to operate the ALS.
2. Provide appropriate training materials, including a hunting and fishing license sales manual, which will be updated as policies, procedures or statutory changes take place.
3. Provide a toll free telephone “Help Desk” service during normal DNR business hours to assist Retailers with equipment or license issuance questions.
4. Provide a toll free telephone “Help Desk” service during normal DNR business hours to assist Retailers with accounting questions.
5. Provide copies of informational materials and regulations to Retailers for distribution to hunters and anglers relating to authorized DNR licenses sold through the ALS, as long as copies of such materials remain available.

The Retailer agrees to and shall:

A. Equipment

1. Remit a \$350.00 refundable non-interest bearing security deposit at the time of initial enrollment for each set of DNR equipment to be placed at the approved location. A Retailer (whether having a single business location or multiple locations) who is selling DNR licenses as of October, 2004, need not pay a security deposit at the time of initial enrollment in the ALS program based upon the Retailer's past partnership with the DNR regarding license sales. The waiver of the security deposit will be a one-time event, and any Retailer having lost or damaged equipment will be required to pay the security deposit on replacement equipment.
2. Sign an acknowledgement that it has received DNR equipment and/or training, as applicable.
3. Provide a network connection, either dial-up or broadband, at each approved location for data transfer via the Internet. Use of broadband or high-speed connectivity is encouraged to provide optimum customer service. Based upon a Retailer's past partnership with the DNR in license sales, the DNR may elect to pay, in whole or in part, the dial-up connectivity expenses associated with this Agreement for a Retailer selling DNR licenses as of October, 2004. The DNR will not pay any monthly local telephone service charges, any charges associated with the installation of a telephone or any charges related to internal networking of existing Internet connectivity. The DNR may cease payment of any dial-up connectivity expenses associated with this Agreement upon providing notice to the Retailer sixty (60) days in advance of such payment termination.
4. Provide reasonable security and operating environment to protect equipment and supplies from damage and unauthorized use.
5. Maintain adequate insurance coverage against theft or loss on provided equipment.
6. Use equipment provided by the DNR for the sale and printing of authorized DNR licenses for that purpose only, and protect the equipment from unauthorized use. Other uses, such as surfing the Internet or printing non-DNR documents, may result in lockout of a Retailer and subsequent removal of the equipment.
7. Maintain replacement supplies of toner and paper for printing licenses.
8. Promptly report to the DNR any equipment problem that the Retailer cannot solve or cure without assistance.
9. Return defective equipment to the DNR immediately, in a manner instructed by the DNR, in the event such defective equipment is replaced. The Retailer shall pay the replacement value of any such equipment that is not returned or that shows obvious signs of abuse.
10. Obtain the prior written consent of the DNR before transferring any equipment from one location to another.
11. Place the equipment and materials within sight of a customer service area or within an appropriate department within the store (i.e. the sporting goods or outdoor recreation department), depending upon the nature and layout of the store.
12. Provide access, during normal business hours, to any employee of the DNR or DNR's service provider to inspect any equipment or materials furnished by the DNR.

B. Financial Responsibility

1. Provide the DNR with a voided check or deposit slip that identifies the Retailer's bank account and routing number to enable the DNR to create an Automated Clearing House ("ACH") for electronic funds transfers and/or automated withdrawals to facilitate the remittance of fees collected from license sales to the DNR (less the Retailer's statutory service fee). The DNR encourages the use of a depository approved by the Indiana Treasurer of State. The list of approved depositories may be found at www.in.gov/deposit/AppDep.htm.

2. Cooperate with the DNR in achieving the following schedules for the remittance of funds to the DNR:
 - 2.1 The DNR will conduct an ACH withdrawal at 1:00 AM each Tuesday to cover license sales made during the previous week, through 11:59 P.M. Thursday of that week (less the Retailer's statutory service fee). An invoice showing the amount due DNR will be in the Retailer's mailbox on the licensing system on Friday morning showing the amount to be withdrawn the following Tuesday. If the ACH withdrawal attempt reveals non-sufficient funds ("NSF"), a second ACH will be attempted at 1:00 AM on Friday. If the second ACH also results in NSF, the DNR will suspend the Retailer's account, and the Retailer will not be able to sell licenses until the account is reinstated. The DNR will conduct the weekly ACH withdrawals beginning approximately two weeks after the DNR accepts the Retailer's application.
 - 2.2 The DNR will assess a \$27.50 fee for each NSF result from an ACH transaction.
 - 2.3 The DNR will not reinstate the Retailer's account until the total outstanding balance is paid and funds have cleared the banking system.
 - 2.4 The DNR must receive full payment within five (5) business days after suspension.
 - 2.5 The DNR may terminate this Agreement if the Retailer has not made payment in full within ten (10) days of the suspension.
 - 2.6 The DNR reserves the right to make and/or establish ACH withdrawal schedules in addition to the schedule outlined above or at times different from those specified above, provided an alternative withdrawal time does not disadvantage the Retailer.
 - 2.7 In the event of a failed electronic transfer of funds or ACH withdrawal caused by the Retailer's negligence, the DNR may lock the Retailer out of the ALS at the DNR's discretion.
3. Notify the DNR in writing at least thirty (30) days in advance of the Retailer's intent to change the bank account it uses for DNR license transactions and provide the DNR with a voided check or deposit slip from the new account or a statement from the Retailer's bank that identifies the new account and routing number.
4. Make proper use of all license fees collected under this Agreement. Money collected from the sale of licenses, less any statutorily authorized service fees, belongs to the State's Fish and Wildlife Fund under Indiana Code § 14-22-12-15, and any use of such money for personal gain is prohibited by Indiana law.

C. License Issuance, License Fees and Customer Service

1. Sell each license at the amount of the established fee for the particular license type. In accordance with Indiana Code §14-22-12-14, Retailers must not directly or indirectly charge, collect or receive for a license more or less than the fee amount established by the Natural Resources Commission under Indiana Code §14-22-12-1(b). The established fee amounts are specified in the DNR's Indiana Hunting and Fishing Guide and on the DNR's website: www.in.gov/dnr/fishwild/
2. Refrain from any and all of the following prohibited practices:
 - 2.1 Selling licenses at a reduced cost, even at a Retailer's own expense.
 - 2.2 Charging any fee in excess of the legally established hunting and fishing fee, including any convenience fee, credit card usage fee or service charge.
 - 2.3 Requiring customers to purchase any additional merchandise in order to purchase a license.
 - 2.4 Refusing to offer any type of license that is authorized by the DNR for sale through the ALS.
 - 2.5 Selling licenses to customers using expanded sales options; including, but not limited to, telephone sales, Internet sales or mail order sales, unless specifically authorized through a contract with the DNR.
3. Sell all types of licenses available through the ALS and not restrict the types of licenses that can be purchased.

4. Register participants in limited or special hunts and provide electronic deer and turkey check-in at selected locations.
5. Provide registration under the National Migratory Bird Harvest Information Program (“HIP”) for licensed hunters planning to hunt designated migratory birds.
6. Make available for training, to be provided by the DNR, at least one but no more than two Retailer employees or representatives, before the Retailer uses the ALS. A large Retailer, including a Retailer operating a chain of stores, shall send one or two employees or representatives to the DNR training and instruct the DNR-trained employees to train other Retailer employees. Any Retailer employee assigned by the Retailer to issue licenses should receive training from the DNR or a previously-trained employee of the Retailer before using the ALS. The Retailer is responsible for all transactions made under the user name and password assigned to its business.
7. Maintain the confidentiality of all personal data, including Social Security numbers, provided by customers, and require that all Retailer employees and representatives maintain such confidentiality.
8. Abide by the rules and regulations that govern the sale of hunting and fishing licenses including, but not limited to, performing the following functions before issuing a license:
 - 8.1 Obtaining verification of residency;
 - 8.2 Viewing an appropriate form of identification; and
 - 8.3 Confirming that hunter education requirements have been met.
9. Maintain adequate supplies of copies of regulations, license applications and other informational materials, as long as DNR has supplies available, and display informational posters provided by the DNR for easy visibility to the customers.
10. Maintain a minimum volume of license sales at a level set by the DNR. Currently, the DNR may deny continued enrollment in the ALS program to any Retailer not selling a minimum of fifty (50) licenses per year. Hunting and fishing stamps do not constitute a license sale for purposes of this provision. In the event of discontinuance, the Retailer shall return equipment to the DNR within ten (10) days. Failure to return equipment may result in a collection action for the replacement value of the equipment not returned.
11. Deal with license applicants in a professional manner; providing the best possible service in the delivery of licenses and information and treating our mutual customers fairly and efficiently.
12. Inform license applicants raising disputes or grievances regarding a hunting or fishing license denial or relating to hunting or fishing license regulations to promptly contact the DNR for information regarding the process for administrative review of a DNR action.

D. Other

1. The Retailer shall exercise sole control over the selection and dismissal of the Retailer’s employees, and the DNR shall take no responsibility for supervision or direction of the Retailer’s employees.
2. The Retailer shall accept responsibility for all transactions made under the user name and password assigned to its business.
3. The Retailer shall notify the DNR in writing in advance of any change in business location or ownership or the Retailer’s intent to cease operation of its business or discontinue the sale of DNR licenses.
4. The DNR reserves the right to inspect the business site or premises during the Retailer’s normal business hours for the purpose of assuring performance under this Agreement, and the Retailer agrees to cooperate with the DNR in this regard.

APPENDIX B

ADDITIONAL TERMS AND CONDITIONS OF THE AUTOMATED POINT OF SALE LICENSE SYSTEM AGREEMENT

The Indiana Department of Natural Resources (“DNR”) and the automated point of sale license system retailer (“Retailer”) shall be bound by the following terms and conditions of the Automated Point of Sale License System Agreement.

Assignment, Subcontracting and Transfer

The Retailer shall not assign, subcontract or transfer the whole or any part of this Agreement. If there is a change in ownership of the Retailer’s business, the new owner must be approved by the DNR and sign an Automated Point of Sale License System Agreement before it may sell DNR licenses.

Audits

The Retailer acknowledges that it may be required to submit to an audit of funds handled under this Agreement. Any such audit shall be conducted in accordance with IC 5-11-1 and/or audit guidelines specified by the DNR.

State Property Rights and Copyright

The Retailer hereby acknowledges that the State has property rights and copyright interests in the information, data, equipment and publications utilized in the performance of this Agreement, and the Retailer hereby agrees not to interfere with those rights and interests.

Indemnification

Retailer agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the Retailer and/or its representatives, agents or employees. The State shall not provide such indemnification to the Retailer.

Independent Contractor

The Retailer agrees that both parties, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Retailer shall be responsible for providing all necessary unemployment and workers’ compensation insurance for the Retailer’s employees.

Compliance with Laws

The Retailer agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

The Retailer agrees to make a good faith effort to provide and maintain a drug-free workplace. Retailer will give written notice to the DNR within ten (10) days after receiving actual notice that the Retailer or

an employee of the Retailer has been convicted of a criminal drug violation occurring in the Retailer's workplace.

The Retailer agrees that it shall not discriminate against any employee or applicant for employment in the performance of this Agreement on the basis of race, color, religion, sex, disability, national origin or ancestry. The Retailer also agrees that it will not discriminate in the provision of goods and services based on race, color, national origin, age, sex, disability or status as a veteran.

The Retailer warrants that it shall obtain and maintain all required permits, licenses and approvals and comply with all health, safety and environmental statutes, rules and regulations in the performance of work for the State.

The Retailer and its agents and employees shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code 4-2-6 *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Retailer is not familiar with these ethical requirements, the Retailer shall refer any questions to the Indiana State Ethics Commission or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Retailer or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the Retailer.

The Retailer acknowledges that it is required to be current in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The State may check on the status of such payments at any time. If the Retailer is in arrears on such payments, this Agreement may be suspended until the Retailer is current in its payments.

Severability

The invalidity of any section, subsection, clause or provision of this Agreement, including its appendices, shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Agreement.